

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

ROBERT G. EKLUND,

Plaintiff,

v.

Case No. 8:21-cv-2134-TPB-TGW

WHITNEY R. PYLE,
ASHLEY M. SMITH, *et al.*,

Defendants.

_____/

ORDER ADOPTING REPORT AND RECOMMENDATION

This matter is before the Court on consideration of the report and recommendation of Thomas G. Wilson, United States Magistrate Judge, entered on September 14, 2021. (Doc. 3). Judge Wilson recommends Plaintiff's complaint (Doc. 1) be dismissed without prejudice with leave to file an amended complaint due to several deficiencies, most notably lack of subject matter jurisdiction. Neither Plaintiff nor Defendants filed an objection to the report and recommendation.

On September 21, 2021, Plaintiff filed an amended complaint. (Doc. 5). In the amended complaint, Plaintiff again asserts diversity as the basis for the Court's jurisdiction, alleging that the three Defendants are citizens of different states. However, complete diversity is required to establish jurisdiction – that is, the plaintiff must be diverse from *every* defendant. *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998). In this case, Plaintiff – a citizen of Florida – is not diverse from Defendant Matthew R. Rheingans, Esq. – also a citizen of Florida.

After conducting a careful and complete review of the findings and

recommendations, a district judge may accept, reject, or modify the magistrate judge's report and recommendation. 28 U.S.C. § 636(b)(1); 718 F.2d 198, 199 (4th Cir. 1983); *Williams v. Wainwright*, 681 F.2d 732 (11th Cir. 1982). A district court must "make a de novo determination of those portions of the [report and recommendation] to which an objection is made." 28 U.S.C. § 636(b)(1)(C). When no objection is filed, a court reviews the report and recommendation for clear error. *Macort v. Prem, Inc.*, 208 F. App'x 781, 784 (11th Cir. 2006); *Nettles v. Wainwright*, 677 F.2d 404, 409 (5th Cir. 1982).

Upon due consideration of the record, including Judge Wilson's report and recommendation, the Court adopts the report and recommendation. Consequently, this case is dismissed due to lack of subject matter jurisdiction.

Accordingly, it is

ORDERED, ADJUDGED, and DECREED:

- (1) Judge Wilson's report and recommendation (Doc. 3) is **AFFIRMED** and **ADOPTED** and **INCORPORATED BY REFERENCE** into this Order for all purposes, including appellate review.
- (2) This case is **DISMISSED** due to lack of subject matter jurisdiction.
- (3) The Clerk is directed to terminate any pending motions and deadlines, and thereafter close this case.

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 20th day of October, 2021.



TOM BARBER
UNITED STATES DISTRICT JUDGE